

UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA  
LAS VEGAS DIVISION

ORACLE USA, INC., ET AL.,	)	CASE NO: 2:10-CV-106-LRH-PAL
	)	
Plaintiffs,	)	CIVIL
	)	
vs.	)	Las Vegas, Nevada
	)	
RIMINI STREET, INC., ET AL.,	)	Tuesday, January 10, 2012
	)	
<u>Defendants.</u>	)	(10:30 a.m. to 10:49 a.m.)

DISCOVERY HEARING

BEFORE THE HONORABLE PEGGY A. LEEN,  
UNITED STATES MAGISTRATE JUDGE

Appearances: See Next Page

Court Reporter: Recorded; FTR

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1        Las Vegas, Nevada; Tuesday, January 10, 2012; 10:30 a.m.

2                    (Mr. Howard Appeared Telephonically)

3                    (Call to Order)

4            **THE CLERK:** All rise.

5            **THE COURT:** Good morning. Please be seated.

6            **THE CLERK:** Your Honor, we are now calling the  
7 hearing in the matter of *Oracle U.S.A., Inc. versus Rimini*  
8 *Street, Inc.* The case number is 2:10-cv-0106-LRH-PAL.

9            Your Honor, for Plaintiff's Counsel, Mr. Geoffrey  
10 Howard, appears telephonically for these proceedings.

11            Counsel present in the courtroom, please state your  
12 names for the record.

13            **MR. RINGGENBERG:** Kieran Ringgenberg, Boies, Schiller  
14 and Flexner for the Plaintiffs, your Honor.

15            **MR. HIXSON:** Tom Hixson with Bingham, McCutchen for  
16 Plaintiffs.

17            **MR. POCKER:** Your Honor, Richard Pocker of Boies,  
18 Schiller and Flexner for the Plaintiffs.

19            **MR. RECKERS:** Rob Reckers of Shook, Hardy and Bacon  
20 for the Defendants.

21            **MR. ALLEN:** West Allen for Lewis and Roca for the  
22 Defendants.

23            **MR. WEBB:** Trent Webb, Shook, Hardy, and Bacon for  
24 the Defendants.

25            **THE COURT:** All right. Counsel, I have reviewed your

1 joint status report and corrected joint status report and in  
2 getting to the bottom of this, Oracle has agreed to supplement  
3 a number of discovery requests that are disputed in Rimini's  
4 request that I compel further responses or deposition testimony  
5 via a Rule 30(b)(6) deposition.

6 The initial question I have for counsel for Oracle is  
7 when will you be prepared to provide the supplementation that  
8 you have agreed to provide?

9 **MR. UNIDENTIFIABLE:** Your Honor, within four weeks  
10 from today.

11 **THE COURT:** And we have a January 17th deadline for  
12 disclosing experts. Are you on target to disclose experts and  
13 expert reports that comply with the rule by then?

14 **MR. UNIDENTIFIABLE:** We are.

15 **THE COURT:** And how voluminous do you expect the  
16 supplemental responses will be that you are willing to produce  
17 within four weeks?

18 **MR. UNIDENTIFIABLE:** I think it will be -- the right  
19 way to characterize that is not a great deal more voluminous  
20 than the existing responses. The additional information  
21 provided would not expand their length significantly but it  
22 will add more detail and there is (indiscernible) the records.

23 **THE COURT:** Right. You've agreed to provide some  
24 additional categories of information and examples and so forth,  
25 and you've also agreed to produce the global matrix for the

1 years that are missing.

2 **MR. UNIDENTIFIABLE:** Correct.

3 **THE COURT:** Is that going to be included within the  
4 materials that you're prepared to produce and supplement within  
5 four weeks?

6 **MR. UNIDENTIFIABLE:** Yes.

7 **THE COURT:** All right.

8 **MR. UNIDENTIFIABLE:** And that's essentially two  
9 documents which, you know, there are, I don't know, 150 pages  
10 or so but that's the end of it.

11 **THE COURT:** And where are you in terms of resolving  
12 the two customer production issues, Medtronic and QBC?

13 **MR. UNIDENTIFIABLE:** There is a hearing pending in  
14 the District of Minnesota and that needs to be resolved at the  
15 hearing presumably and I will have to confess, your Honor, that  
16 I'm going to have to turn to my colleague, Mr. Hixson, on the  
17 other.

18 **MR. HIXSON:** We had a scope and meet and confer with  
19 QBC and did come up with a firm date for that deposition to go  
20 forward. So far they have not indicated that they would not  
21 provide someone for a deposition but we don't have a firm date  
22 yet but we're working on that, your Honor.

23 **THE COURT:** All right. And then you were working  
24 with the Adams partners to potentially get a couple of more  
25 hours worth of deposition testimony because their Rule 30(b)(6)

1 designee wasn't prepared to addressed a couple of topics?

2           **MR. UNIDENTIFIABLE:** That is correct, your Honor.  
3 Oracle has reserved rights and if we decide to proceed with a  
4 motion, we would file that in the Northern District of  
5 California where they're located.

6           **THE COURT:** But how close are you to determining --  
7 what I'm trying to do is tie up loose ends so that we  
8 absolutely have an end to fact discovery --

9           **MR. UNIDENTIFIABLE:** Right.

10           **THE COURT:** -- and that nothing that occurs is going  
11 to have a significant impact on the expert disclosures.

12           **MR. UNIDENTIFIABLE:** We expect to either fish or cut  
13 bait very soon.

14           **THE COURT:** And given those representations, counsel  
15 for Rimini, obviously this was a very voluminous status report  
16 with attached exhibits and they've now agreed to supplement and  
17 they've clarified their position about a few things.

18           Where are you in terms of anything that needs to be  
19 immediately addressed in your motion to compel given the  
20 agreements to supplement that they have made?

21           **MR. UNIDENTIFIABLE:** Your Honor, you're absolutely  
22 right. We made a lot of progress last week on the issues that  
23 are presenting. There is one issue or two related issues that  
24 I think are ripe for -- to be heard today and I'd like the  
25 opportunity to address those issues.

1           **THE COURT:** That's fine and that's why I -- I know  
2 this is a work in progress. You have been making progress.  
3 You have clarified your positions and so forth. So tell me  
4 what you'd like me to address here and -- wherever you're more  
5 comfortable. The podium is probably a little easier.

6           **MR. UNIDENTIFIABLE:** In the two issues, and they're  
7 related, are related to the contention interrogatories or the  
8 contention discoveries for the copyright claim and the contract  
9 claim. In those, in particular, are the Interrogatories Number  
10 17, 18, and 32, and then there's related topics from our second  
11 notice. And really what we're asking for here is what we  
12 consider to be basic discovery as to the specific acts of  
13 infringement that are alleged by Oracle against Rimini Street.

14           Right now, if you'd look at Interrogatory Number 17,  
15 Oracle's response to it, and for the record, it's at Document  
16 217, Exhibit H-20, and all that's listed there are the  
17 statutory types of copying, a list of the hundred  
18 registrations, and then some -- a laundry list of ways that  
19 things could be copies; it's not specific.

20           Now they have agreed to provide some examples of  
21 specific conduct as exemplary. From Rimini's position, that's  
22 not enough. All we're asking for is a level of detail that  
23 they'd have to prove at trial to make a prima facie case.

24           **THE COURT:** We've been talking about that since  
25 basically day one in the discovery process.

1           **MR. UNIDENTIFIABLE:** Yes, your Honor.

2           **THE COURT:** When I tried to encourage you folks to  
3 perhaps agree to a representative universe of claims for which  
4 you could have that kind of detail and that was not within the  
5 realm of possibility for one or both sides.

6           **MR. UNIDENTIFIABLE:** Let me say this. It's less  
7 about the sampling and proving up certain instances. It's more  
8 about defining the population. What are the alleged acts?

9           We -- you know, sampling is something that, you know,  
10 is established and even without agreement, I suspect there will  
11 be some sampling in this case. But really, it's what is the  
12 universe? What are the acts of infringement? What are the  
13 tortious acts of infringement? What are the tortious acts that  
14 Rimini is alleged to have --

15           **THE COURT:** But your interrogatory asks for each and  
16 every specific act, not the category of acts that the other  
17 side alleges that constitute a breach or an infringement on  
18 their intellectual property.

19           **MR. UNIDENTIFIABLE:** Yes, and that's what I'm asking  
20 for and I think they've offered some categories and hopefully  
21 categories beyond, you know, the boilerplate and the laundry  
22 list that we have in the current response.

23           What we are asking for, you know, what are all the  
24 acts of copying? What are -- how many instances of  
25 infringement are there so we can, you know, defend against



1 those acts?

2           It's the same burden of proof you'd have at trial.  
3 To prove up an act there has to be at least identification of  
4 it, the act of infringement. For each copy that they say is  
5 infringing, tell us -- you contend that's an infringing copy  
6 and the registration at the very least.

7           So that is what we're asking for, the listing of all  
8 of their allegations. We're not aware of any authority that  
9 would allow them to go to trial just on examples.

10           **THE COURT:** There's tens of thousands of alleged  
11 infringements here. Do you really expect that your trial judge  
12 is going to let you go to trial for 10,000 days to prove up  
13 10,000 or so alleged acts of infringement?

14           **MR. UNIDENTIFIABLE:** I suspect not but where we are  
15 now is we don't know of any. There aren't any specific acts  
16 that are contemplated. Maybe there is a middle ground. Maybe  
17 they won't decide --

18           **THE COURT:** That hasn't come out in the customer  
19 depositions for example?

20           **MR. UNIDENTIFIABLE:** I don't believe so, your Honor.  
21           Maybe they won't have the time or the judge will not,  
22 you know, allow them enough time to prove up each act  
23 individually. But we don't know which acts they're going to  
24 choose.

25           **THE COURT:** Well, from day one you've been telling

1 me, "Don't let the discovery be so voluminous and so onerous on  
2 one or both sides that you will effectively lose by being  
3 crushed in the process."

4 **MR. UNIDENTIFIABLE:** Yes, your Honor, that's  
5 certainly something that I've said many times up here.

6 But I think here all we're asking for is the most  
7 basic discovery that you can have in a copyright case, the acts  
8 of copying, and after two years we don't have those acts of  
9 conduct, and that's my position on that and a similar position  
10 on the contract claims as well.

11 We have a list of what Oracle's witnesses described  
12 as the relevant provisions from thousands of the contracts.  
13 Though it's clear that these aren't the provisions that are  
14 actually alleged to have been breached, there's no  
15 identification of specific acts.

16 For example, some of these provisions that are listed  
17 in the discovery relate to copying of -- for clients that  
18 Rimini has never had any copies of their software. So why are  
19 -- you know, they may be relevant -- the type of provision  
20 might be relevant but there's no conduct by Rimini Street that  
21 would correlate.

22 So again, we're seeking the basic allegations of what  
23 claims were breached by what conduct. It is -- if this were a  
24 simple breach of contract case, certainly we'd be entitled to -  
25 - for each contract identification --

1           **THE COURT:** "When you didn't pay us on August 5th,  
2 you breached paragraph blank of the contract." That -- yes.

3           **MR. UNIDENTIFIABLE:** Well, maybe not the date but,  
4 you know, we have certain -- we have a certain number of copies  
5 of the (indiscernible) system, we'll disclose them, and yes,  
6 there are a large number.

7           Are each of those copies infringing? For example, we  
8 have backup copies. We have disaster recovery copies that we  
9 keep off sight. Does Oracle allege that all of our disaster  
10 recovery copies are also acts of infringement, also breach?

11           **THE COURT:** Have you had those -- that level of  
12 detailed discussions in the meet and confer process about what  
13 it is that you're really trying to determine? Because they say  
14 you're on fair notice. You know, we're not required to outline  
15 our trial testimony through each witness or tell you exactly  
16 how we're going to put this on. The issue is whether you have  
17 enough information in the discovery to put you on a level  
18 playing field to know what their claims are so that you can  
19 defend.

20           **MR. UNIDENTIFIABLE:** And we have not. Using my  
21 backup example, we don't know whether --

22           **THE COURT:** All right. And that's why I ask you.

23           Have you had that level of detailed discussions in  
24 the meet and confer process about what it is more specifically  
25 other than "I want to know every date, every time, every

1 customer, every contract, every registration information?"  
2 Have you had that level as opposed to "Just give me the entire  
3 universe," and which they say "You do have the entire universe?  
4 It's there somewhere, just go dig it out"?

5 **MR. UNIDENTIFIABLE:** No, we haven't had those  
6 discussions and, you know, I would say --

7 **THE COURT:** I didn't think so because it doesn't come  
8 across in the joint status report that you've had that level of  
9 discussions.

10 **MR. UNIDENTIFIABLE:** Yes, your Honor. Thank you,  
11 your Honor.

12 **MR. UNIDENTIFIABLE:** Your Honor, I'll be brief.

13 I think it's clear to understand our point of view.  
14 Let me give you an example to demonstrate.

15 So one of our -- one of the theories in this case is  
16 that Rimini has made infringement copies by taking software and  
17 installing it on Rimini Street systems when we contend that's  
18 not authorized by the Ruble (phonetic) licenses. The --

19 **THE COURT:** So is your answer that every time they  
20 copied it and put it on their system it's an infringement?

21 **MR. UNIDENTIFIABLE:** That's right and their --

22 **THE COURT:** So why can't you just answer an  
23 interrogatory that tells them that?

24 **MR. UNIDENTIFIABLE:** That is exactly what we've  
25 agreed to do. I mean, the existing interrogatories do that at

1 a certain level of detail. I should say a certain level of  
2 generality. And what we've agreed to do is to say, "Look,  
3 here's an example of the types of conduct. You did this many  
4 times. We're not going to detail every time you did it." But  
5 that's enough to tell them what are trial story is going to be.

6 **THE COURT:** But is -- but it is your contention that  
7 if you -- for example, the issue that he just raised.

8 Is it your contention that if we recovered a backup  
9 copy from -- that is a separate act of infringement?

10 **MR. UNIDENTIFIABLE:** It is. It is a separate act of  
11 infringement it is our contention.

12 **THE COURT:** Then they're entitled to know that that's  
13 -- they're entitled to know that's your position and you have  
14 not responded to interrogatories with that level of specificity  
15 to let them know that that's where you're going.

16 **MR. UNIDENTIFIABLE:** Well, I would take issue in two  
17 regards.

18 First, our current interrogatory I think does put  
19 them on notice that that's our view. We don't need to tell  
20 them every time they made a copy of our software because it's  
21 their conduct and they know every instance. I think what we're  
22 obligated to do is to make sure that they're fairly on notice  
23 of what our general trial, you know, story will be and I think  
24 we've done that.

25 But we have agreed to go further after they raised

1 the issue and say, "Look, we'll tell you specific categories of  
2 conduct tied to your business processes and we'll tell you that  
3 -- a specific example of that tied to evidence and that will  
4 allow you to know exactly what we're going to say."

5           So to follow up on the example I started with, the  
6 installation of a local environment is a copy. Every time it's  
7 backed up, that's a copy. Every time it's run on a computer  
8 that generates copies inside of the RAM of the computer. Every  
9 time a file was removed and distributed to a customer, that's  
10 another copy that's distributed.

11           **THE COURT:** So have you actually done the analysis of  
12 how many times that happened?

13           **MR. UNIDENTIFIABLE:** I will say, your Honor, to the  
14 extent there's a number it will be contained in our expert  
15 report which they're going to get a week from today.

16           To the extent that we can say, we know it's an  
17 extremely large number. That's derived from evidence from  
18 their files which they know about and will be captured within  
19 the categories and examples that we propose to provide to them  
20 in response to their concerns.

21           And I think if you look at what the legitimate  
22 purpose of the contention interrogatory is, it's to make sure  
23 that they can prepare for trial and that level of response will  
24 do that. To make it an encyclopedia, to say, "Here are each of  
25 the thousands of acts," is an extraordinary burden that doesn't

1 really serve any legitimate purpose. It just runs up the costs  
2 of litigation which they've said again and again is  
3 unnecessary. And I'm not sure frankly what they would do with  
4 it. Even if we were to put the thousands of hours in and say,  
5 you know, "Here's the 1.7 million copies you made of this  
6 particular file," it's not going to change what they do at  
7 trial. Their defense is going to be the same whether it's --

8 **THE COURT:** It's going to influence the potential  
9 damages.

10 **MR. UNIDENTIFIABLE:** That's a fair point, your Honor.

11 I would say, I don't think Mr. Reckers would dispute  
12 that the number of copies made of Oracle software is extremely  
13 high. That's not really the issue and I think we -- that's  
14 undisputed. There's a lot of copying and their defense is --

15 **THE COURT:** And so is your damages expert going to  
16 have a model for how damages are calculated based on concrete  
17 examples from the discovery and the evidence?

18 **MR. UNIDENTIFIABLE:** Yes.

19 **THE COURT:** And you're telling me that you think that  
20 they're not going to be surprised by what your damages expert  
21 says because it's all out there and you've laid it out with  
22 sufficient specificity that they can figure out where you're  
23 going on your -- both your claims and your damages  
24 calculations?

25 **MR. UNIDENTIFIABLE:** I think that's entirely true,

1 your Honor. If you don't have any further questions, I don't  
2 have anything more for you. Thank you.

3 **THE COURT:** All right. I'm going to reserve ruling  
4 on this until I see what the extent of the supplementation is  
5 and whether it fairly addresses your concerns. I'm not going  
6 to have them list 10,000 examples of every time a copy -- and  
7 provide you with a -- you know, that's busy work and it's a  
8 waste of everybody's time and resources. But you are entitled  
9 to fair notice of what their claims are and then what they  
10 based their claims on but I'm not going to compel an each and  
11 every example type of response to an interrogatory and I don't  
12 think your trial judge is going to let you try it that way. I  
13 wouldn't. I mean, it can't be tried that way. Just be  
14 realistic, folks.

15 You know, there's a limit to what people can ingest  
16 and so what I will do is, since you've indicated the responses  
17 should be supplemented in four weeks, set this for a hearing in  
18 four weeks. By then, you should have the initial disclosure of  
19 the expert reports which will also inform you about whether  
20 you're surprised or you're not surprised based on what  
21 counsel's representing -- the tact they're going to take and  
22 how they're going to prove this case up. And then I will rule  
23 on any outstanding disputes concerning the adequacy of the  
24 supplementation if there are any further requests for -- to  
25 compel supplementation of the contention interrogatories either



1 by interrogatory or by 30(b)(6) deposition testimony.

2 I do appreciate Plaintiffs' observation that on many  
3 of the topics for which you are seeking supplementation that  
4 rely upon Rimini's documents that have been designated as  
5 "confidential, attorneys' eyes only" there's a limit to what  
6 you can do without being in conflict to that -- with that  
7 position. So this is not your run of the mill rear-end  
8 automobile accident where the disputes are relatively simple to  
9 resolve.

10 So we'll take it a step at a time. We'll see what  
11 you get in supplementation. I'll review them very carefully  
12 and listen to you concerning whether or not you think they are  
13 or are not adequate to meet the Plaintiffs' discovery  
14 obligations. Okay.

15 Mr. Miller, what do we have in a little bit better  
16 than four weeks out?

17 **THE CLERK:** Yes, your Honor, currently I'm looking at  
18 Tuesday, February the 14th, 2012, at 10:00 o'clock a.m.

19 **THE COURT:** Gentlemen, do you want to be traveling  
20 away from your significant others on Valentine's Day?

21 I don't want to cause any domestic problems. Let's  
22 see if we can pick another date.

23 **THE CLERK:** Your Honor, we do have all day available  
24 on Monday, the 13th. Will that work for everybody?

25 **THE COURT:** Is that in the ballpark, gentlemen, or do

1 you want it a little bit sooner or a little bit later?

2           **MR. UNIDENTIFIABLE:** I would suggest that might not  
3 leave enough time for the parties to get together to work out  
4 what the disputes are, if any, after supplementation and before  
5 the CNC so that we can present it in an orderly way.

6           **THE COURT:** Okay. Why don't we continue it to the  
7 following week after that week, Mr. Miller.

8           **THE CLERK:** Yes, your Honor.

9           How about Tuesday, February 21st, 2012, at 10:00  
10 o'clock a.m.?

11           **THE COURT:** Is that workable for both sides?

12           **MR. UNIDENTIFIABLE:** I think so.

13           **THE COURT:** Okay, excellent. Well, thank you. We're  
14 moving along and we're making progress and let's take it to the  
15 next step. So we'll cross our fingers and see if we can't tie  
16 up some loose ends and get you to your expert based discovery.  
17 All right. Thank you, Counsel. Good day now.

18           **(Proceeding was adjourned at 10:49 a.m.)**

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CERTIFICATION

I certify that the foregoing is a correct transcript from the electronic sound recording of the proceedings in the above-entitled matter.

A handwritten signature in black ink, appearing to read "Toni Hudson", is written above a horizontal line.

Signed

January 23, 2012

Dated

*TONI HUDSON, TRANSCRIBER*